

### **AMENDMENT NO. 3**

#### **TO CONTRACT SERVICES AGREEMENT TO PROVIDE EXCLUSIVE CATERING SERVICES AT THE CONGRESSWOMAN JUANITA MILLENDER-MCDONALD COMMUNITY CENTER AT CARSON**

**THIS THIRD AMENDMENT TO THE CONTRACT SERVICES AGREEMENT TO PROVIDE EXCLUSIVE CATERING SERVICES AT THE CONGRESSWOMAN JUANITA MILLENDER-MCDONALD COMMUNITY CENTER AT CARSON** ("Amendment") by and between the CITY OF CARSON, a California municipal corporation ("City") and CHOURA VENUE SERVICES, a California corporation ("Caterer") is effective as of the \_\_\_\_ day of \_\_\_\_\_, 2021.

#### **RECITALS**

A. City and Caterer entered into that certain Contract Services Agreement to Provide Exclusive Catering Services at the Congresswoman Juanita Millender-McDonald Community Center at Carson dated December 6, 2011 ("Agreement"), whereby Caterer agreed to provide catering services for conferences, business meetings, banquets, trade shows, weddings, receptions, private parties, benefits and other functions held at the Congresswoman Juanita Millender-McDonald Community Center in the City of Carson requiring such services, including food and beverage sales, food setups, serving and clean-ups, and receive compensation through receiving a percentage of sales generated from such functions.

B. The original term of the Agreement began January 1, 2011, and was set to expire on December 31, 2016, with the City having the authority, pursuant to Section 10, to extend the Agreement for one additional five-year term, on the same terms and conditions, unless modified in writing by both parties.

C. On November 4, 2015, the City and Caterer entered into Amendment No. 1 to the Agreement, extending the term of the Agreement for the additional five-year term, from January 1, 2017 through December 31, 2021. Amendment No. 1 erroneously stated that the five-year extension term would conclude December 31, 2022; this was a miscalculation which would have represented a six-year extension of the Agreement, and which was not the parties' intent.

D. On November 1, 2018, the City and Caterer entered into Amendment No. 2 to the Agreement, adding a new Section 24 thereto, whereby the City engaged Caterer to perform, directly or via engagement of a qualified third-party vendor, services related to decorating the City's Civic Center for the 2018-2019 holiday season.

E. With the onset of the COVID-19 pandemic in early 2020, the City and Caterer experienced various hardships. Among other things, the City was forced to close its Community Center to the public in March of 2020, and Caterer failed to pay City for rent due in the total amount of \$35,766.95 pursuant to Section 4 of the Agreement for events catered at the Community Center in January and February of 2020 (the "Unpaid Rent"). Additionally, Caterer failed to refund deposits paid to it by a large number of patrons for catering services at functions that had been booked at the Community Center prior to the pandemic but that were cancelled due to the pandemic, resulting in numerous patron complaints to the City and Caterer.

#### **Exhibit No. 4**

F. After a dispute with the City regarding its obligation to pay the above-referenced patron refunds as necessary to resolve the complaints, which dispute was resolved without the need for legal action or termination of the Agreement, Caterer has now resolved the patron complaints to the satisfaction of the City, and as a result, City is now willing to agree to an installment plan allowing Choura to repay the Unpaid Rent in installments over a period of several months while allowing performance of the Agreement, as amended by this Amendment, to continue in the interim. The Community Center has re-opened to the public as of June 2021.

G. The aforementioned trials and tribulations have also illuminated certain defects and deficiencies in the Agreement, which the parties now desire to correct via additions, modifications or deletions to various provisions of the Agreement.

H. Based on the foregoing, City and Caterer now desire to enter into this Third Amendment to effectuate such changes, as set forth below.

## **TERMS**

1. **Contract Changes.** The Agreement is amended as provided herein.

A. Subsection (j) (Miscellaneous) of Section 1 (Caterer's Obligations) is hereby amended to add a new subparagraph (4), to read as follows:

“(4) Any and all new contracts or agreements between Caterer and clients/patrons related to catering of functions at the Center shall provide that any deposits made by clients/patrons in advance to reserve catering services for a function at the Center shall be refundable in accordance with a Caterer policy that is substantially consistent with City's refund policy for reservations for use of Center facilities as set forth in the City's “Carson Event Center - Rules Regulations, and Conditions of Use” attached hereto as Exhibit E (the “Rules and Regulations”). Notwithstanding the foregoing, Caterer's policy for refunding catering deposits may be more lenient, but not more stringent, with respect to payment of refunds to clients/patrons than City's policy for refunding Center facility use deposits. Caterer's failure or refusal to pay a refund in accordance with such policy or this provision shall constitute a breach of this Agreement by Caterer, and complaints from clients/patrons regarding failure or refusal of Caterer to pay a refund in accordance with such policy or this provision shall be deemed to be of a serious nature pursuant to Section 3 of this Agreement. In the event of a change to the Rules and Regulations, the City shall provide notice of same to Caterer, and upon such notice the amended version of the Rules and Regulations shall automatically be deemed incorporated into this Agreement without the need for approval of an amendment hereto.”

B. The current version of the Rules and Regulations, which is attached hereto and identified as such, is hereby added to the Agreement as Exhibit “E” thereto.

C. Section 3 (Complaints) of the Agreement is hereby amended to read in its entirety as follows (added text shown in ***bold italics***, deleted text shown in ~~strike through~~):

***“3. Complaints.*** Caterer shall respond promptly to all complaints from patrons and shall report to the City on each complaint and the resolution thereof. If City believes a complaint to be of a serious nature, City shall notify Caterer ***and direct Caterer to resolve the Complaint immediately.*** Caterer shall respond to such notification within four days ***and shall make best efforts to resolve the complaint within thirty days, unless further time is granted by the Contract Officer.*** ~~Receipt of Accumulation of~~ an unreasonable number of ***unresolved*** serious complaints ***at any one time*** shall be considered a breach of this Agreement. Determination of the seriousness of complaints shall be at the ***reasonable discretion of the Contract Officer*** ~~consensus of the Community Center Manager, the Caterer’s Carson Food & Beverage Manager, the Caterer’s Controller and the Public Services General Manager.~~ ***The foregoing applies to all patron/client complaints, irrespective of whether City receives the complaint directly from a patron/client or whether City receives notice of the complaint from Caterer.”***

D. Subparagraph (7) of subsection (a) of Section 4 (Compensation) of the Agreement is hereby deleted and removed in its entirety.

E. A new subsection (d) is hereby added to Section 4 (Compensation) of the Agreement, to read in its entirety as follows:

***“d.*** Notwithstanding any provision of subsections (a)-(c), inclusive, of this Section 4 to the contrary, the monthly user fees that were generated for functions held during the months of January and February of 2020, totaling \$35,766.95 (the “Unpaid Rent”), shall be paid by Caterer pursuant to an installment plan as follows: (i) the first \$3,941.74 of the Unpaid Rent on or before August 1, 2021; (ii) the next \$5,941.74 of the Unpaid Rent, for a total of \$9,883.48, on or before September 1, 2021; (iii) the next \$7,941.74 of the Unpaid Rent, for a total of \$17,825.22, on or before October 1, 2021; (iv) the next \$7,999.99 of the Unpaid Rent, for a total of \$25,825.21, on or before November 1, 2021; and (v) the final \$9,941.74 of the Unpaid Rent, for a total of \$35,766.95, on or before December 1, 2021.”

F. Subsection (a) (Room Reservations) of Section 6 (City’s Obligations) of the Agreement is hereby amended to read in its entirety as follows (added text shown in ***bold italics***, deleted text shown in ~~strike through~~):

***“a. Room Reservations.*** City shall arrange for the rental of rooms in the Center through a computerized room availability system (“scheduling system”) and shall endeavor to refer persons desiring catering services to Caterer prior to client’s deposit or commitment. City shall make every

effort to include food and/or beverage functions in event planning. City shall be solely responsible for making all reservations and cancellations on the scheduling system. ***City shall provide staffing to perform the foregoing functions in accordance with the City's Community Services Department's Organizational Chart for the Center attached hereto as Exhibit F (the "Organizational Chart"), during regular City business hours (Monday through Thursday, 7AM-6PM). Notwithstanding the foregoing, this paragraph shall not be construed to: (i) require the City to fill the current vacancies identified in the Organizational Chart at or for any time; (ii) require the City to keep any position identified in the Organizational Chart filled at or for any time; or (iii) to preclude City from making any changes to its personnel system or to any the positions (or the organization or structure of positions) identified in the Organizational Chart. In the event of a change to the Organizational Chart, the City shall provide notice of same to Caterer, and upon such notice the amended version of the Organizational Chart shall automatically be deemed incorporated into this Agreement without the need for approval of an amendment hereto."***

City shall make the scheduling system available to Caterer for viewing the event scheduling. Caterer shall have read-only access to the scheduling system, without any right to make modifications to the scheduling data. City shall provide access to the scheduling system on Caterer's computers. Should Caterer wish to have access to the scheduling system at any other location, such access, including but not limited to, hardware, software, installation and wiring requirements, shall be at Caterer's sole expense."

**G.** The current version of the Organizational Chart, which is attached hereto and identified as such, is hereby added to the Agreement as Exhibit "F" thereto.

**H.** Subsection (e) of Section 23 is hereby amended as follows (added text shown in ***bold italics***, deleted text shown in ~~strikethrough~~):

**"e. Notice.** Any notice, demand, request, document, consent, approval or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally, ***emailed***, or sent by prepaid, first-class mail to the following individuals: For City, to the attention of the ***Contract Officer*** ~~City Manager~~, City of Carson, 701 East Carson Street, Carson, CA 90745, ***rlennox@carsonca.gov***, and For Caterer, to ***Dan D'sa, Grand Food & Beverage, 4101 E. Willow St., Long Beach, CA 90815, dan@grandfandb.com*** ~~James R. Choura, Choura Events, 375 Maple Avenue, Torrance, California 90503, 310.320.6200, www.choura.us.~~ Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered ***or emailed if emailed as provided in this Sub-***

**section**, or in 72 hours from the time of mailing if mailed as provided in this Sub-section.”

**I.** A new subsection (l) is hereby added to Section 23 (Miscellaneous Provisions) of the Agreement to read in its entirety as follows:

**“l. Contract Officer.** City’s Contract Officer for purposes of this Agreement shall be Robert Lennox, Director of Community Services, or such person as may be designated by the City Manager (“Contract Officer”). It shall be Caterer’s responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services pursuant to this Agreement, and Caterer shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.”

**J.** All references to the “City Manager or his designee” in the Agreement are hereby amended to mean and refer to the Contract Officer, as defined in Section 23(l) of the Agreement.

**2. Continuing Effect of Agreement.** Except as amended by this Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement, as amended by this Amendment to the Agreement.

**3. Affirmation of Agreement; Warranty Re Absence of Defaults.** City and Consultant each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each party represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation.

Consultant represents and warrants to City that, as of the date of this Amendment, City is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to Consultant that, as of the date of this Amendment, Consultant is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

**4. Adequate Consideration.** The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

5. **Authority.** The persons executing this Amendment on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment on behalf of said party, (iii) by so executing this Amendment, such party is formally bound to the provisions of this Amendment, and (iv) the entering into this Amendment does not violate any provision of any other agreement to which said party is bound.

[SIGNATURES ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**

CITY OF CARSON, a municipal corporation

\_\_\_\_\_  
Lula Davis-Holmes, Mayor

**ATTEST:**

\_\_\_\_\_  
John W. Carroll, Sr., Chief Deputy City Clerk

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Sunny K. Soltani, City Attorney  
[BRJ]

**CONSULTANT:**

CHOURA VENUE SERVICES, a California corporation

By:\_\_\_\_\_  
Name:  
Title:

By:\_\_\_\_\_  
Name:  
Title:  
Address:

**Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.**

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On \_\_\_\_\_, 2021 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/>	INDIVIDUAL	_____
<input type="checkbox"/>	CORPORATE OFFICER	_____
<input type="checkbox"/>	PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL	TITLE OR TYPE OF DOCUMENT _____
<input type="checkbox"/>	ATTORNEY-IN-FACT	_____
<input type="checkbox"/>	TRUSTEE(S)	NUMBER OF PAGES _____
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	_____
<input type="checkbox"/>	OTHER _____	_____
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____ _____		DATE OF DOCUMENT _____ _____ _____
		SIGNER(S) OTHER THAN NAMED ABOVE _____ _____ _____



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I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

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<input type="checkbox"/>	OTHER _____	_____
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____		DATE OF DOCUMENT _____
		SIGNER(S) OTHER THAN NAMED ABOVE _____

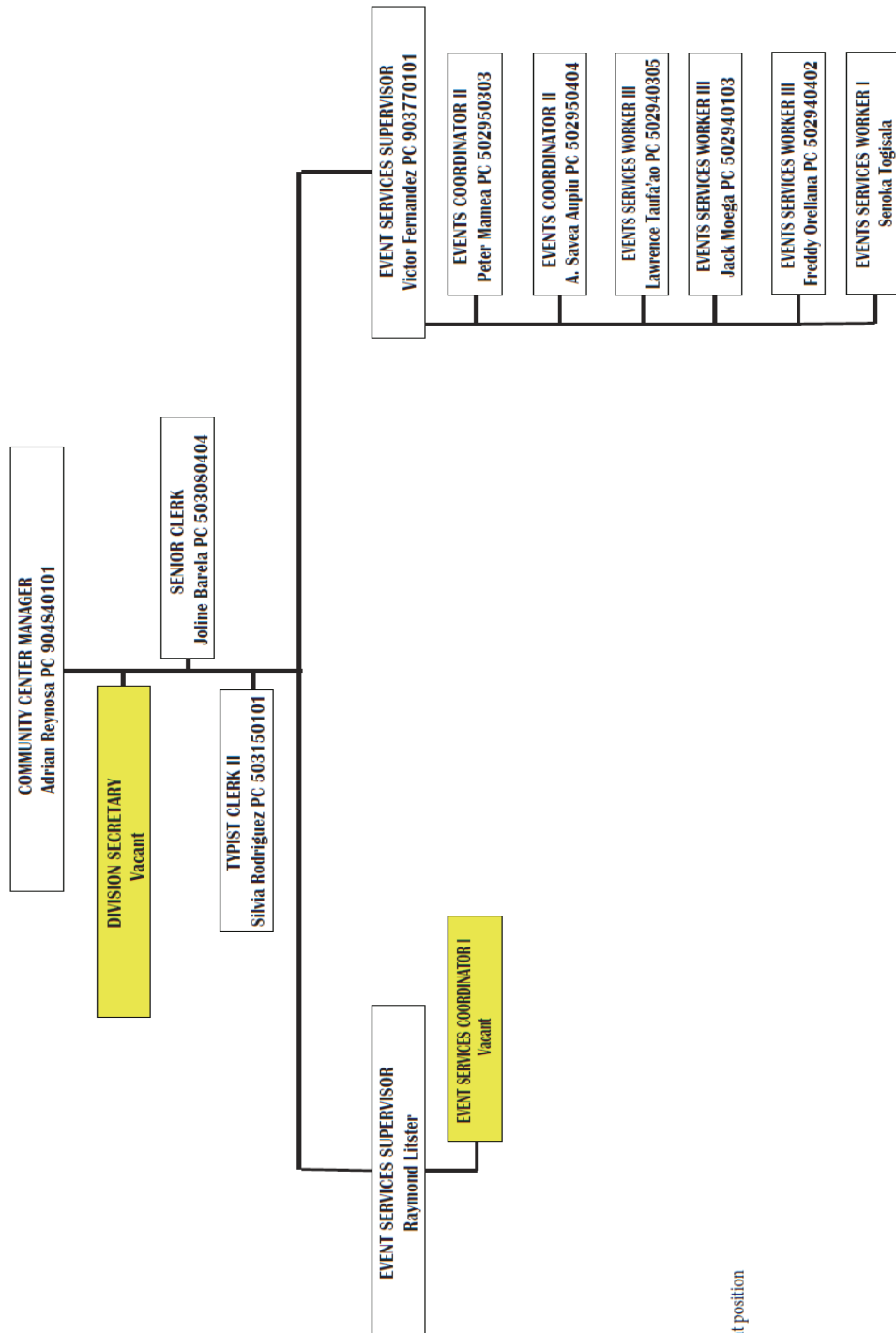
**EXHIBIT “E” TO AGREEMENT**

**RULES AND REGULATIONS**

**[to be attached]**

## EXHIBIT “F” TO AGREEMENT

### ORGANIZATIONAL CHART



= Vacant position